

## REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

### **I. Status of the claims**

Claims 1-69, 80, 85-86, 92 and 94-99 were previously canceled without disclaimer or prejudice thereof.

Claims 70 and 87 are currently being amended to recite a “*single* joint space” to clarify that all samples are separated in one and the same common joint space, which is not compartmentalized. The amendment adds no new matter and support can be found throughout the specification, for example Figure 1 and at page 28, lines 13-20 and page 29, lines 3-8 (which correspond to paragraphs [0133] and [0137] of U.S. Publication No. 2005/0130317). Paragraph [0133] describes the joint space as an “analytic space” which receives separation medium. Paragraph [0137] describes that samples migrate through the separation medium in the joint space. Figure 1 shows the space (2) as a hollow, 3-dimensional space (*see also* page 28, lines 10-11, which corresponds to paragraph [0132] of U.S. Publication No. 2005/0130317, describing the space of Figure 1 as a hollow space for receiving separation medium).

Applicants acknowledge that these amendments are made after a final action on the merits. However, because the amendments do not introduce new matter and place the claims in condition for allowance or at least in better condition for appeal, entry and examination thereof is respectfully requested.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier. After amending the claims as set forth above, claims 70-79, 81-84, 87-91 and 93 are pending in this application.

**II. Claim rejection – 35 U.S.C. § 102**

**A. Hayashizaki et al.**

Claims 70-72, 74-79, 81-84, 87-91 and 93 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 6,120,667 (Hayashizaki) for the reasons set forth in the Office Action dated 06-22-10. Applicants respectfully traverse this ground for rejection.

Specifically, the Office Action asserts that “each of the separation capillaries of Hayashizaki ... comprises a ‘joint space’ that is filled with separation media,” and that “the capillaries extend in three dimensions and contain separation media” (Office Action dated 06-22-10 at page 3). Therefore, the Office Action concludes that the teachings of Hayashizaki anticipate the present claims. As summarized by the Examiner, Hayashizaki allegedly describes a method and device for the simultaneous separation of samples, wherein each sample is separated within a joint space (the capillaries), with each capillary extending in three dimensions and containing separation medium. Applicants respectfully disagree with the Examiner’s analysis and conclusion.

Without conceding to the Office Action assertions and solely to expedite prosecution, the claims have been amended to recite a “*single* joint space”. As detailed in claims 70 and 87, the present claims describe methods and devices for the simultaneous parallel separation and detection of a multiplicity of samples within a *single* joint space without compartments. The joint space extends across all three spatial coordinates and is entirely filled with separation medium. Thus, for the simultaneous parallel separation of a multiplicity of samples, only a single, joint space is provided in the invention. Such a configuration is supported by the specification, for example, at paragraphs [0132], [0133] and [0137] of U.S. Publication No. 2005/0130317, describing the joint space as a 3-dimensional, analytical space entirely filled with a separation medium, and that all samples migrate through the same medium contained within the same joint space.

Hayashizaki does not teach or suggest a *single* joint space, through which a plurality of samples migrates. Because Hayashizaki requires multiple spaces (capillaries) for the simultaneous separation of samples, Hayashizaki does not anticipate the pending claims. Accordingly, reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) is respectfully requested.

**B. Wierzbowski et al.**

Claims 70-72, 74-79, 81-84, 87 and 89-91 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Publication No. 2002/0168643 (Wierzbowski) for reasons presented in the Office Action dated 06-22-10. Applicants respectfully traverse this ground for rejection.

Specifically, the Office Action asserts that “each of the sample wells of Wierzbowski comprises a ‘joint space’ that is filled with separation media,” and that “the wells extend in three dimensions and contain separation media” (Office Action dated 06-22-10 at page 3). Therefore, the Office Action concludes that the teachings of Wierzbowski anticipate the present claims. Applicants respectfully disagree with the Examiner’s analysis and conclusion.

As explained above, the claims have been amended to recite a “single joint space”. The single joint space of the amended claims is entirely filled with separation medium, which is permeable in any direction. The single joint space is not constrained by compartments, such as wells, and all samples migrate through, and are separated for analysis in the same joint space.

Wierzbowski does not teach or suggest a single joint space, through which a plurality of samples migrates. Because Wierzbowski requires multiple spaces (wells) for a plurality of samples, Wierzbowski does not anticipate the pending claims. Accordingly, reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(e) is respectfully requested.

**C. Desrosiers et al.**

Claims 70-76, 78, 82-84, 87-91 and 93 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 6,410,332 (Desrosiers) for reasons presented in the Office Action dated 06-22-10. Applicants respectfully traverse this ground for rejection.

Specifically, the Office Action asserts that “the sorbent traps are each a ‘joint space’ that extends in three dimensions and contain separation media”. Therefore the Office Action concludes that the teachings of Desrosiers anticipate the present claims (Office Action dated 06-22-10 at page 3). Applicants respectfully disagree with the Examiner’s analysis and conclusion.

As explained for both Hayashizaki and Wierzbowski, the claims have been amended to recite a “single joint space”. The single joint space of the present claims is entirely filled with a separation medium, which is permeable in any direction. The single joint space is not constrained by compartments, such as capillaries, wells or traps, and all samples migrate through and are separated together in the same joint space.

Desrosiers does not teach or suggest a single joint space, through which a plurality of samples migrates. Because Desrosiers requires multiple spaces (sorbent traps) for a plurality of samples, Desrosiers does not anticipate the pending claims. Accordingly, reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(e) is respectfully requested.

**III. Conclusion**

The present application is now in condition for allowance. Favorable reconsideration of the application is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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By /Michele M. Simkin/

FOLEY & LARDNER LLP  
Customer Number: 22428  
Telephone: (202) 672-5538  
Facsimile: (202) 672-5399

Michele M. Simkin  
Attorney for Applicant  
Registration No. 34,717